

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

**The Trustees of the Corcoran Gallery of  
Art,**

**Petitioner,**

**v.**

**The District of Columbia,**

**Respondent,**

**Civil Action No. 2014 CA 003745 B**

**Judge Robert Okun**

**NEXT EVENT: JULY 18, 2014**

**PETITIONER'S MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION TO MOTION TO INTERVENE**

**July 14, 2014**

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**INTRODUCTION AND SUMMARY:**

Movants seek to intervene in this proceeding to delay or even stop the only available arrangement that will assure the opening and operation of the Corcoran College of Art + Design for the coming academic year, and the most appropriate arrangement to preserve the Corcoran's collection of art and the renovation of the Corcoran's nationally registered building, including its continued use for gallery space and college. Offering no alternative, the Movants instead seek obstruction for the sake of obstruction, asking the Court to substitute their demands for the considered judgment of the Corcoran's Board of Trustees. The Motion to Intervene should be denied.

First, under long-settled law of the District of Columbia, only the Attorney General has standing to assert the public interest in this *cy près* proceeding, and Movants do not qualify as "others" under D.C. Code Section 19-1304.05. Anyone seeking to intervene must be able to point to specific provisions of the trust instrument — in this case the Deed of Trust — that confer standing by giving them some identified interest that is distinct from those which the general public may enjoy by virtue of the Trust's operation. Movants have not cited any such provision,

and none exists. The cases relied upon by Movants are distinguishable. None are pertinent to the type of interests they allege here.

Even if Movants could establish standing, the relief they request — an independent review of the Corcoran’s financial records and the removal or termination of the current Board on grounds of alleged financial mismanagement — is beyond the purview of a *cy près* proceeding. Movants do not have standing under the D.C. Code to require an accounting or to remove directors.

Nor is there any reason in equity to grant the Motion, as the relief Movants seek would deepen the Corcoran’s financial difficulties, increase uncertainties about the School’s future to the detriment of the School’s current students, faculty and staff, and degrade the operations of the Corcoran Gallery, further jeopardizing its continued existence and standing. Because the academic year is scheduled to begin in August, in order to provide certainty to the students, faculty and staff, it is important that the Court determine promptly after the hearing on July 18 the pending Petition for *Cy Près*, and resolve all the issues, including intervention.

### **FACTUAL BACKGROUND**

The Trustees of the Corcoran Gallery of Art is a corporate entity, chartered by Congress in 1870. *See* 16 Stat. 139 (1870).<sup>1</sup> The Deed of Trust given by William H. Corcoran to initially establish the Corcoran specifically contemplated that the Trustees would seek and obtain a Congressional Charter. While the Movants assert, with neither citation nor foundation, that the Corcoran is a “trust” as defined in DC Code §19-1301.03, in fact it is a nonprofit corporation which holds some property as a result of a trust. The DC Code Provisions on nonprofit corporations specifically contemplate that situation. *See, e.g.*, DC Code §29-401.05.

Both the Deed of Trust, and the Charter which created the corporation that manages the property, specifically refer to the creation of the Corcoran Gallery, and grant the Board of Trustees full discretion in the management of the institution.<sup>2</sup> The Deed and Charter do not refer

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<sup>1</sup> A copy of the congressional charter is in the record in this proceeding as Exhibit 2 to the Declaration of Lauren Stack, filed with the Motion to Enter filed on June 25, 2014.

<sup>2</sup> The Deed at Paragraph Sixth, grants to the “discretion and judgment of the Trustees” the “management generally of the institution.”

in any way to the Corcoran College, or indeed to any educational program at all. The College was created by the Board, some 20 years after the Deed, not as part of the obligations under the Deed or the Charter, but as an additional mechanism by which to foster the use of the Corcoran's collection and to allow a formalized means of assuring access and training for students who had sought to use the Gallery to study and copy the paintings on exhibition.<sup>3</sup>

For the reasons set forth in the Petition that initiated this proceeding, and further explained in the pending Motion for the Entry of Cy Près, the Corcoran Board has determined that the long term operation of the Gallery and College has become financially impossible. The financial circumstances of recurrent deficits for many years are beyond question. To resolve those circumstances, the Corcoran's Board considered available alternatives in light of the standards they had identified for a long term future: that the collection be preserved and appropriately displayed; that the College have a long term future while continuing to have a relationship with the collection; that the Corcoran's Beaux Arts building be renovated and continue in use for the College and as a gallery; and that the Corcoran name and legacy would continue as it relates to the College, the collection, and the museum. To meet those standards, the Trustees negotiated and have executed — and sought the Court's approval to implement — agreements with the National Gallery of Art ("NGA") and The George Washington University ("GW").

Movants now seek to intervene in this proceeding. While asserting a variety of putative "special interests," the Movants do not identify any actual alternative to the agreements between the Corcoran and the NGA, or between the Corcoran and GW. Rather than identifying an alternative, the Movants argue for two distinct measures of relief as the basis for their intervention — first, they attack the financial management of the Board, demanding that there be an accounting by "outsiders," and demanding that the Court effectively relieve or replace the

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<sup>3</sup> Indeed, it appears that in 1877, an artist unaffiliated with the Corcoran conducted classes, using the Corcoran's collection as study materials. While Mr. Corcoran contributed money that was used to support classes, it was not until after his death that a separate building was constructed in 1889, and the Corcoran College of Art first opened its doors in 1890 under that name. The Trustees' determination to create a formal structure to control the educational activities making use of the Corcoran Gallery and its collection is not surprising, but the College or an education program as such were not contemplated, and are never referred to, in the Deed of Trust or the corporate charter. Movants point to no document or other indication that Mr. Corcoran established a "trust" for the College, as opposed to his giving money to the Corcoran to support its programs.

current Board; and second, apparently recognizing that accounting and removal from office are not relevant in cy prè, they mention, almost offhandedly, minor changes to the agreements, which are neither required to achieve the relevant ends of the proceeding, nor do they have a basis in the Deed or the Charter.

In effect, Movants ask the Court, without any proper basis, to substitute the Movants and their demands for the considered judgment of the Corcoran's Board. In doing so, they request remedies related to accounting (which are not available in a cy prè process), and do so with no showing that they have standing or a proper basis for their claims. Because they have no standing to make the claims that they put forward, and because the relief they seek is not available in this proceeding, the motion to intervene should be denied in all respects.

## **ARGUMENT**

### **A. Legal Standard for Establishing Standing in the District of Columbia**

#### *(1) Movants Have No Standing to Bring This Motion.*

Movants pay, at best, lip service to the applicable standard for intervention in proceedings related to charitable organizations. They recurrently assert a "special interest," but fail to even mention the Deed or Charter provision which would identify them or their class as being specially entitled as a beneficiary under which the putative interest arises, and wrongly assert that courts have "regularly" granted standing and intervention to movants in their circumstances.

Movants' claim to standing rests exclusively on D.C. Code Section 19-1304.05, which permits the settlor and "others" to maintain a proceeding to enforce a trust. Clearly, they are not the settlor of the trust they seek to invoke, but neither are they proper members of the statutory class of "others." The two cases on which Movants primarily rely involved parties and circumstances wholly different from those presented here. Thus, Movants do not meet the standard for intervention.

Under longstanding precedent and the DC Code, only the Attorney General has standing to protect the public interest. The standard was first enunciated by Chief Justice Marshall in *Trustees of Dartmouth College v. Woodward*, 17 US 518, 587 (1819) (State has preclusive power



of enforcement with regard to charities; private citizens and organizations have no standing).<sup>4</sup> “[B]ecause the interest in ensuring that charitable trust property is put to proper purposes is properly that of the community at large, the traditional rule has been that only a public officer, usually the state Attorney General, has standing to bring an action to enforce the terms of the trust.” *Hooker v. The Edes Home*, 579 A.2d 608, 612 (D.C. 1990). Those who are beneficiaries of the charitable trust have no standing to enforce the conditions of the trust, because the trust is dedicated to the public benefit. To do otherwise would create vexatious and improper litigation. *Id.* at 612 (“[T]he rationale for vesting exclusive power in a public officer stems from the inherent impossibility of establishing a distinct justiciable interest on the part of a member of a large and constantly shifting benefited class, and the recurring burdens on the trust and the trustees of vexatious litigation that would result from the recognition of a cause of action by any and all of a large number of individuals who might benefit incidentally from the trust.”) And see *Alco Gravure v. Knapp Foundation*, 479 N.E.2d 752, 756 (NY 1985).

That standard has remained a constant. Courts have only reluctantly and in selected instances permitted those who are members of a small and identified group of direct beneficiaries to intervene — to meet the test. It is not enough that the group be “identified” and small, but that the identity arise directly under the trust itself. See *Alco Gravure, supra*, at 765 (a special interest arises when the members of the class are entitled to a preference in the distribution of the funds, and the class is sharply defined and limited in number). The mere receipt of benefits previously is not by itself sufficient.

Nor does a *cy près* proceeding provide an opportunity by which to seek to enforce claims unrelated to the proposed change in the governing arrangements. Rather, the relief that Movants seek, effectively an accounting and changes in the Trustees’ themselves, are not *cy près* related. Because the Corcoran is a corporate entity, any action seeking to review or overturn a corporate action must be brought under the DC Non-Profit Corporations Act. There is no provision in the Act for the relief that these Movants seek — those rights lie exclusively in the Attorney General, or in members of “designated bodies,” *i.e.*, the Trustees themselves. See *infra*. This court has

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<sup>4</sup> “In every ...charitable institution..., the whole legal interest is in the trustees and can be asserted only by them. The donors, or claimants of the bounty, if they can appear in court at all, can appear only to complain of the trustees. In all other situations, they are identified with, and personated by, the trustees, and their rights are to be defended and maintained by them.” *Dartmouth*, 17 US at 645-46.

recognized, following the Court of Appeals, that where the alleged injury flows from an ordinary exercise of discretion by the trustees in administering the trust, no standing lies in putative beneficiaries. *The Family Federation for World Peace and Unification International v. Moon*, 2012 WL 3070965 at 10 (D.C. Super. Ct.) citing *Hooker, supra*, at 617.

**B. Movants Fail to Demonstrate Standing**

Even a cursory review of Movants’ allegations establishes three points — first, while recurrently postulating a “special interest,” they fail completely to tie that putative interest to any requirement of the Deed or Charter; second, they are not in any way the equivalent to those whose interests have been held to grant standing in the cases they cite; and third, their claims are precisely the vexatious and improper claims that courts have held not to be proper.

*(1) Movants Have No Special Beneficial Interest Under the Deed or Charter.*

Movants assert rights arising from essentially two kinds of status — ties to the Corcoran College of Art + Design; and action as a donor of specific artwork for three of the movants.

As already noted, Movants’ papers repeatedly cite their putative rights and interests as “students,” or as “alumni” or as “faculty or staff” of the Corcoran College or the Gallery. But they fail just as often to tie that putative interest to any specific provision or requirement of the Deed or the Charter. And the reason is obvious — William Corcoran did not establish a trust, or contemplate that trust would become a corporation, for the purpose of creating the College. There is no provision, indeed not a single word, in the Deed of Trust about the Corcoran College, or about any requirement of the Trustees to open, operate, fund, or continue a college or other educational institution. Rather, the Deed was directed exclusively to the collection of art and its display in a gallery.

However sincere the Movants’ opposition to the transfer of the College’s operation to a well-funded University may be, the simple fact is that their interest in the College has no relation to the Deed or the Charter (which specifically references the Deed as the source of the activities of the Corporation created by the Congressional Act). In their roles as students, alumni or faculty, the movants are only the beneficiaries (in most instances, former beneficiaries) of a separate program created by the Board, and in no way are they entitled to any preference in

distributions or benefits initially transferred by the Deed and implemented through the Charter since the Corcoran's establishment. They can point to no required element of the Charter that supports their putative interest. In purporting to seek to "enforce" any element of the Deed or Charter, the Movants simply ignore that there is no charter provision to enforce in relation to the College.

(2) *The Cases Cited by Movants are Distinguishable.*

The weakness of Movant's position is even more plain when compared with the circumstances of those in the two cases on which they primarily rely. In *Hooker v. The Edes Home*, 579 A.2d 608 (1990), the underlying will, charter and bylaws of the charitable corporation were specifically devoted to establishing and maintaining a free home for elderly, indigent widows. The plaintiffs were individuals specifically within the group for whose benefit the charity had been established, and thus the court found them to be within the category of a "clearly identified special beneficiary" for whom the trust was created. *Id.* at 612-613. Here, Mr. Corcoran established an entity to operate a gallery not a college, and no person associated with the College can claim to be a "beneficiary" for whose specific and special benefit the Corcoran was created.

Similarly in *Young Men's Christian Association of the City of Washington v. Covington*, 484 A.2d 589 (D.C. 1984), the trust under which the YMCA held the building specifically covenanted that the YMCA would hold the land (or use the proceeds) for work of the YMCA among defined residents. The plaintiffs were members who received a particular benefit with special privileges that others did not have. *Id.* at 592. Here, the underlying Deed and Charter have no reference to the College, and the Movants are merely persons who have received a benefit that is separate and distinct from the specific terms of the Deed and Charter.<sup>5</sup> The mere fact that a person is a potential beneficiary is not sufficient to grant standing. *Family Federation for World Peace, supra*.

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<sup>5</sup> The issue in *Alco Gravure, supra*, 479 NE 2d 752, is identical. There, the plaintiffs were a class specifically designated as having preferential rights under the relevant trust documents — they were employees for whom the Foundation's original purpose was to provide aid. No such link can be demonstrated by the Movants here.

Courts have recurrently denied standing to students precisely because the group is large, changeable, and amorphous. *See, e.g., Miller v. Aderhold*, 184 S.E.2d 172 (Ga. 1971); *Associated Students of the University of Oregon v. Oregon Investment Council*, 728 P.2d 30 (Or. Ct. App. 1986) *review denied*, 734 P.2d 354 (Or. 1987).

The standing of alumni cannot be better — they are not current recipients of any benefit under the Deed or Charter, and they are an even larger and more amorphous group than current students. *See, e.g., Milton Hershey School v. Hershey Trust Company as Trustee of the Milton Hershey School Trust*, No. 712 (Dauphin County, PA 1963). Indeed, one movant, Avijit Gupta, graduated more than 10 years ago, and Rueben Breslar graduated more than 8 years ago. Movants cite no case granting alumni standing.

There is also no standing for Robin Bell and Jayme McLellan as putative “faculty,” or for Carolyn Campbell, Elizabeth Punsalan, and Linda Simmons as former staff of the Gallery. None are in fact current employees, and none can make any claim to receiving current benefits even if the Deed and Charter related to the College or had any provisions related to faculty and staff. Ms. McLellan is only a former adjunct faculty, having resigned in the fall of 2012 and she has not taught at the Corcoran since. Mr. Bell, another former adjunct faculty, has not taught since the Spring of 2013.

Ms. Campbell, Ms. Punsalan, and Ms. Simmons all worked in relation to the Gallery, but left the employ of the Corcoran before 2008. That they were once employees gives no rise to any basis on which they can assert that they have an entitlement to receipt of benefits that differs in any way from any member of the public — which is in fact all they currently are.

Given that none of the Movants are current faculty or staff, it would be particularly inappropriate for them to be seen as in any way representing the actual faculty or staff of the Corcoran, especially when the relief they seek will harm the current faculty and staff by creating uncertainty and financial risk. Even if Movants attempted to add current faculty or staff, for the reasons already stated, they would still lack standing.

Nor are Movants as donors entitled to standing. It is universally acknowledged that a donor, having surrendered all property rights, cannot post hoc seek to create conditions on the

gift. *Dartmouth, supra*; *Carl J. Herzog Found. Inc. v. University of Bridgeport*, 699 A. 2d 995, 997 (Ct. 1997); Restatement of Trusts 2d at §391, cmt. e (“A suit for the enforcement of a charitable trust cannot be maintained by the settlor...”). Here of course, the situation is even more attenuated — the Movant donors did not create the trust.<sup>6</sup> At most, they could seek to enforce the conditions that are associated with the gifts that they gave. Copies of the deeds of gift associated with the Movants are attached<sup>7</sup> — the gifts were not conditioned and thus they have no basis on which to attack the Corcoran’s ongoing decisions with regard to those works. Even if the gifts were conditioned, a donor who has no standing to enforce any aspect of conditions related to his or her gift has even less basis on which to challenge the Board’s actions with regard to the original gift of Mr. Corcoran. In effect, Movants seek to substitute themselves to enforce a public interest when they have no standing to enforce any interest of their own.

(3) *Movants Have not Shown the Required Nexus Between the Alleged Injury and the Proposed Transactions.*

Even assuming *arguendo* that the Movants could show that they possessed some “special interest,” the generalized grievances that they cite are contradicted by the agreements and terms in place.

a. Sebastien Arbona

Arbona’s declaration asserts that he has been offered financial aid in the past and offered housing in the past. He apparently fears that tuition would increase, and that his housing circumstances might change. The Corcoran/GW agreement specifically provides at Section 7.1(b)(vi) that students currently enrolled and in good standing “will continue to be charged tuition and all other fees at the level existing at the Legacy College as of the Closing Date (subject to adjustment on annual basis consistent with past practices...)...” The tuition for

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<sup>6</sup> Some lower courts have occasionally permitted one standing in the shoes of the settlor with regard to enforcement of the underlying original gift, but have been reversed on appeal. *See, e.g., Georgia O’Keefe Foundation v. Fisk University*, 312 S.W.3d 1 (Tenn. Ct. App. 2009). Here, however, the Movants as “donors” are not seeking to enforce conditions related to their gifts — there were none — but rather seek to enforce what they believe to be conditions in Mr. Corcoran’s gift. Of course, as already described, there are no conditions in the Corcoran Deed that relate to the College, but even if there were, the Movants as donors have no standing in relation to those conditions because they did not define or impose those conditions, and cannot stand in the shoes of Mr. Corcoran.

<sup>7</sup> For these purposes, the Corcoran has assumed that gifts given by both Mrs. Simmons and her husband would be within the scope of Movants’ claims. Thus, several of the deeds reflect gifts by Mr. Simmons rather than Mrs. Simmons herself, but they were in all events unrestricted.

the academic year about to start was set by the Corcoran Board, without regard to the GW agreement. There is no link between the alleged injury and the proposed transactions.

b. Reuben Breslar

Breslar is an alumnus, who graduated more than eight years ago. He describes no benefits which arise under the Deed or Charter. He is simply a member of the public, and his interests are those of the public, represented by the Attorney General.

c. Lorenzo Cardim

Cardim graduated in May 2014, having completed his degree and is set to begin master's studies at a different institution. Having received his degree, he describes no benefits which arise under the Deed or Charter. He is simply a member of the public, and his interests are those of the public, represented by the Attorney General.

d. Avijit Gupta

Gupta, as noted above, graduated more than 10 years ago. His only link is through an alumni group, and he describes no benefits which arise under the Deed and Charter. He is simply a member of the public, and his interests are those of the public, represented by the Attorney General.

e. Carolyn Lacey

Lacey is a current master's level student. She alleges that in enrolling she considered the faculty, and the links of the School to the collection. The GW/Corcoran Agreement specifically provides that in operating the School, "the University shall endeavor to maintain the academic quality and artistic mission of the Legacy College as of the Closing Date, including by seeking to preserve and foster the culture, character and diverse nature of the student body." The existing full time faculty have all been offered positions by GW under Section 7.5 of the Agreement, and the adjunct faculty who are needed for scheduled classes have been offered contracts. Lacey's alleged injuries reflect her projections and fears, and she identifies no actual injury which has occurred, and no entitlement to any special benefit or right.

f. Patrick Masterson

Masterson is in a joint program to complete his bachelor's and master's degrees. He alleges that the Corcoran's location in the District was a key factor in his decision to enroll, along with the ability to exhibit his senior project in the Gallery. The GW/Corcoran Agreement specifically provides that "The GW Corcoran School shall continue to have a significant presence in the District of Columbia and at the 17th Street Building in perpetuity..." The parties contemplated the continuation of the student exhibitions as part of the ongoing use of the renovated building as both gallery and college, and GW has agreed to display student art, including faculty and alumni. Masterson's fears are neither well founded, nor do they rest on any entitlement to any special benefit or right.

g. Natalie Perez

Perez is a student in the master's program. She alleges that a factor in her decision to enroll was the link between the College and the Gallery, and the faculty's experience. She raises fears regarding her tuition. As noted above, the GW/Corcoran Agreement specifically provides that the GW Corcoran School will remain in the Corcoran building, with access for the students to the galleries, including the Corcoran Legacy Gallery, and the changing exhibition program of the Corcoran Contemporary, National Gallery of Art, and specifically establishes the basis on which tuition will be continued. The faculty have been offered contracts. Her allegations, like those of Lacey, reflect ill-founded projections and fears, not actual injuries, and in any event do not reflect any special entitlement or right.

h. Thomas Pullin

Pullin is an alumnus, who graduated in 2013. He makes no allegations related to any continuing links to the College, or any benefits to which he would be entitled under the Deed or Charter. He is simply a member of the public, and his interests are those of the public, represented by the Attorney General.

i. Jayme McLellan

As noted above, Ms. McLellan was an adjunct faculty member who resigned in 2012 and has not taught at the College since. She has donated works, in each instance on an unrestricted

basis as shown in the deeds attached as exhibits to this Memorandum. Her declaration asserts fears, but identifies no actual benefit to which she is entitled under the Deed or Charter. She is simply a member of the public, and her interests are those of the public, represented by the Attorney General.

j. Robin Bell

Bell was an adjunct faculty member, but has not taught since the Spring of 2013. He makes no allegations of any current entitlement to any benefit. He is simply a member of the public, and his interests are those of the public, represented by the Attorney General.

k. Elizabeth Punsalan

Punsalan was a staff member of the Gallery who resigned in 2008. She is a member of the public and makes no allegations of any current benefit to which she would be entitled.

l. Carolyn Campbell

Campbell is a former staff member of the Gallery. She donated works in each instance on an unrestricted basis as shown in the deeds attached as exhibits to this Memorandum. She makes no allegation of any current benefit, and is simply a member of the public.

m. Linda Simmons

Ms. Simmons and her late husband donated works in each instance on an unrestricted basis as shown in the deeds attached as exhibits to this Memorandum. She is a member of the public and alleges no special interest that is cognizable.

As the short descriptions establish, most of the Movants are simply members of the public, who are represented by the Attorney General and who have no rights to intervene. They allege and can allege no “special interest” to receive benefits. They are in no way akin to those granted standing in *Hooker* or *YMCA*. The few who are current students allege no right to receive any specific benefit and indeed are not contemplated within the Deed and Charter, and rather than identifying any actual injury or current interest, give voice to fears and projections of events that might occur, but which are contradicted by the terms of the very agreements they seek to oppose.



Put differently, the statements in the Movants' declarations establish that they have no actual "special interest," but rather reflect that they oppose the NGA and GW arrangements, and wish that there were some other arrangement. Their unhappiness at changes to the Corcoran is no substitute for an actual special interest that arises directly under the Deed or Charter. Even if there were a legal basis for standing, which there is not, Movants have not established a factual basis on which to claim standing.

**C. The D.C. Code Does Not Give Movants Standing for the Accounting Relief They Seek, and that Relief is Not Related to Cy Près**

Even assuming arguendo that Movants had standing to seek enforcement of Deed and Charter provisions, they have no standing on that basis to demand the primary relief that they seek — an "independent" review of the Corcoran's financial records and the effective removal or termination of the current Board. Those elements of requested relief are not related to cy près, but rather go directly to the ordinary financial operations and corporate governance of the Corcoran. Those aspects in turn are subject to the provisions of the DC Non-Profit Corporations Act, DC Code Article 29, Chapter 4, which makes no provision for these Movants to seek the results they demand.

A significant portion of the allegations made by Movants, and the litany recited in their declarations about their "belief" that allegations of financial mismanagement are true, are simply not relevant to cy près. Under the relevant code provisions, the grant of cy près turns on whether continued activity by the entity is impossible or impracticable. DC Code, §19-1304.13. The Petition and the Motion to Enter Cy Près establish that in the long term, the Corcoran lacks the financial resources to continue in its historic pattern. Indeed, to operate the College for the upcoming academic term would require that the Board violate the standards imposed by the relevant museum associations by requiring the use of proceeds from the sale of art to be used for operating expenses. The grant of Movants' requested relief would result in the destruction of the Corcoran's reputation as a museum and the dissipation of its limited resources with no benefit to the collection or the Corcoran building.

The Movants have no standing with regard to cy près, but even if they did, they have no standing to demand financial accounting or to raise issues of putative financial mismanagement.

As noted above, the Corcoran is a nonprofit corporate entity, chartered by Congress. Its charter specifically provides that it is governed by a Board of Trustees. There are no persons who are entitled to vote for members of the Board except the sitting Board members themselves, and thus there are no persons who are “members” of the Corcoran as defined in the DC Code. DC Code §29-401.02(24) (“Member” is a person with the right to select or vote for election of directors or to vote on any type of fundamental transaction).

Because there are no “members” as defined in the code, only the Attorney General or a director may bring proceedings related to a challenge to corporate action, or to seek access to the financial information of the Corcoran. *See* DC Code §§29-401.22, 411.02. Only a member or director can seek removal of another director. DC Code §29-406.09. The transactions at issue here, effectively a disposition of assets, do not require approval by “members” (compare DC Code §29-410.01), but do require approval of the Court, with the involvement of the Attorney General. DC Code §§29-401.05, 29-410.03.

In effect, Movants seek to avoid the limitations and requirements of the DC Code by seeking to cloak their demands in the rubric of *cy près*. They cite no cases that would permit that result. Indeed, the case law is clear — a charitable organization, organized as a corporation, is subject to the laws of its jurisdiction with regard to the powers and duties of its directors.<sup>8</sup>

Moreover, the allegations that Movants make, baseless as they are, are not newly discovered. Save the Corcoran, the organization on whose behalf the Movants putatively act, raised these same issues more than two years ago, threatened at the time to bring an action, and did not, apparently recognizing that they had neither basis nor standing under the DC Code to do so. The assertion now that their allegations are timely simply ignores history.

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<sup>8</sup> *Family Federation, supra*, 2012 WL 3070965 is not to the contrary. There the court expressly refused to interpret the amended Non-Profit Corporations Act as now in effect, *Id.* at 13, fn. 11, even though noting that the new Act had express provisions that were relevant. *Id.* at 13-14 and fn. 12. Moreover, the court’s determination was that the plaintiffs there were equivalent to directors or trustees, and thus had a special relationship. That relationship is addressed in the nonprofit code, but it certainly does not apply to Movants.

**D. Equity Does Not Permit the Granting of the Motion**

Courts have sometimes granted standing to those alleged to have a special interest in order to assure that there was some review of the activities of the charity. Here, Movants show no basis on which to assert the transactions would otherwise escape review.

First, the Attorney General of the District has actively reviewed the transactions, and has actively engaged in this proceeding. There cannot be assertions that the Attorney General has neglected his role. The role of the Attorney General is of longstanding — indeed Justice Story, in concurring in the *Dartmouth* case cites a number of such cases. 17 US at 676-77. And see *Vidal v. Girard's Executors*, 43 US 127 (1844). As noted above, the DC Code in addressing non-profit corporations such as the Corcoran defines a clear and specific role for the Attorney General, but provides no role for Movants or those in their shoes. Of course, that is precisely because what Movants seek is the equivalent of a strike suit in a for profit corporation — an effort by one without a direct and significant interest to interfere in a transaction in the hopes of achieving some private gain, without consideration of the public interest. Where the Attorney General has an active and robust role, the courts will not grant standing to private parties seeking their own advantage. See, e.g., *Dillaway v. Burton*, 153 N.E. 13 (Mass. 1926), cited in *Lopez v. Medford Community Center*, 424 N.E. 2d 229 (Mass 1981).

Second, the Attorney General and the Corcoran were acutely conscious of the potential for public concern and the need for a mechanism by which those without standing could nonetheless express their views. It was precisely for that reason that the Attorney General and the Corcoran sought the Court's permission to announce the hearing date and to seek public comment, promising to provide those to the Court. Indeed, the Movants could have made exactly the same points by commenting to the Attorney General and the Corcoran, and those comments would have been provided to the Court. Instead, the Movants have chosen to impose costs and burdens on the process, by insisting improperly that they have “special interests.”

Third, the allegations made by Movants are unfounded and the relief inappropriate to the claims made. In their motion for intervention and the supporting memorandum, Movants make general, and generally unsupported, statements of “interest” that, as shown above, are not the

interests that the courts have recognized as giving rise to standing. The complaint they would file in intervention if allowed is filled with misstatement, innuendo, and outright conjecture.

Throughout Movant's Complaint they rest their unfounded claims on newspaper articles and opinion pieces and then cloak those assertions in their "belief" as if the unsubstantiated statements become fact merely because they believe and repeat them. Although they have no plan of their own, they seek to delay the Court's approval of the existing arrangements on the fond hope that, if given the chance, they will find something better.

The Corcoran's troubles are not new. This same group has assailed the efforts of the Trustees at every turn. They apparently now seek to revisit other possibilities, *e.g.*, the University of Maryland proposal, which they attacked at the time it was first announced; or an inchoate proposal by a wealthy individual, whose "rescue plan" depended heavily on selling the Corcoran's collection and devoting the resulting proceeds to operational and capital expenses. That process (as already laid out in the Petition and the Motion by the Corcoran) would violate applicable museum standards and do exactly what the Movants now assert they do not want — the dissipation of the collection and its removal from the District. And of course, under the DC Code, those actions could not occur without this court's review.

The putative complaint is not filed and, therefore, no answer is due to its litany of innuendo. However, because the Movants have publicly asserted that they must stand in for the public interest (even though that is the Attorney General's role) it is important to be clear that the allegations they raise are demonstrably untrue. Some examples will suffice:

- In Paragraph 7(a) of the Proposed Complaint Movants allege that the Board "announced it would sell" the Corcoran Building. In fact, the Board announced only that in light of the financial circumstances, it was considering that issue — to do otherwise would breach the Board's fiduciary duty to consider all available mechanisms to resolve the financial constraints that the Corcoran faced and faces. As soon as the Board identified feasible and available alternatives that would not involve the sale of the building, they announced that they would no longer consider that option, and in fact set a standard that any transaction must involve the renovation of the building and its continued use as College and Gallery — exactly what the proposed arrangements with GW and NGA would assure.
- In that same paragraph, and at Paragraphs 42 and 43, the Movants allege that the Board "inflated" renovation costs. The Board has consistently referred to specific

studies by qualified consultants in estimating renovation costs.<sup>9</sup> It is not surprising that those estimates have varied with the scope of the renovations to be conducted and as some costs (e.g., for a new roof, for a new HVAC system) have been incurred and the work completed. In any event, the essential point remains unchallenged — the building requires major and substantial renovation that will cost more than the Corcoran has in available financial resources.

- In paragraph 7(b) the Movants assert that the “Board spent more than a year pursuing a plan to relocate the Corcoran Gallery to Alexandria” when in fact the well documented record establishes that Corcoran personnel met repeatedly with officials from the District’s Office of Development, seeking locations in the District, and met with officials in Maryland and Virginia only to assess alternatives for a sustainable future. There is no evidence of any effort to move the Corcoran to Alexandria because no such effort or plan was ever considered.
- In paragraphs 16 and 73(e) the Movants allege that there will no longer be the “opportunity for students to show their artwork in the Corcoran Gallery” when in fact GW has agreed to display student art, including the NEXT exhibit of art by graduating students, as well as the art of Corcoran faculty and alumni in the building.
- In paragraphs 73(d) and 74(c) the Movants indicate that “The National Gallery has not committed to hiring any of the staff, including the curators, at the Corcoran Museum” and that college faculty and staff have not been hired by GW. In fact, the NGA has made offers to 19 employees including the entire curatorial and registration staff, and GW has hired the entire ranked-faculty as well as made offers to over 25 Corcoran staff members and over ninety adjunct faculty.

The remainder of the proffered complaint is no more than the Movants’ assertions that they would do things differently and the unlawful demand that the Court replace the Board because the Movants would prefer that others make decisions. As Movants confess, they have sought for several years to replace the current Board, and they have no lawful mechanism to enforce their disagreement to compel the Board to adopt Movants’ preferences as their own. Movants have therefore seized on this proceeding as a lever to accomplish what the law does not allow them to do.

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<sup>9</sup> Specifically, a May 10, 2011 Master Plan report by Stuart Lynn for renovation of entire museum and college estimated the total cost to be \$102,000,000 exclusive of soft costs. A separate Altieri Seibor Weber, LLC report dated August 6, 2013 and limited to necessary HVAC, Electrical, Plumbing, and Fire Protection estimated those renovation costs to be \$70,860,000.

At bottom, the unhappiness that Movants voice in their papers is no basis on which to grant them standing or the relief that they request. Whatever the depth of their emotional response, it is no substitute for an actual, substantive interest under the Deed and Charter. Nor does it create a factual basis for allegations of mismanagement or the standing to bring those issues to the court.

Worse, the relief that Movants seek will harm the very interests they purport to seek to protect:

- A new academic term is about to start. A delay in approval of *cy près* will make it impossible to give students, faculty and staff any certainty about the new term and impose substantial hurdles on the mechanics of opening and operating the College as well as creating personal confusion and financial hardship on the students in distribution of financial aid, registration for courses, and similar matters.
- Movants' proposal for delay would effectively require the Corcoran to dissipate its remaining limited financial resources to maintain some staff (although staff is already reduced) and to operate the building. Instead of the Corcoran being able to devote some financial resources to the necessary and significant renovation of the Building they profess to love, the Movants would have those funds poured into temporary operations while they seek some inchoate different future.
- In doing so, Movants would require the Corcoran to violate the standards applied by the Museum Association and Museum Directors Association that collections acquisitions funds cannot be used for operations. The result would likely be the exodus of professional staff, and the destruction of the very reputation that Movants allege is important to them.
- Movants criticize the Corcoran repeatedly for management issues, yet the Trustees proposed solution provides for two distinguished Washington, DC based institutions to manage respectively and jointly the College (GW) and the Corcoran Collection (NGA).
- The Board has proposed a specific set of arrangements that assure that the collection will be preserved and be available for display. Movants urge that the NGA be required to accession the entire collection "in order to keep it in the District." But doing so would result in less District public access to the Corcoran Collection. If NGA were to accession the entire Corcoran Collection its ability to display the works in DC would be limited to its current space, plus the additional space at the Corcoran. The Corcoran's proposal would specifically seek to place works that NGA does not accession in DC institutions that will preserve them and undertake their display in appropriate arrangements. That proposal in fact better

assures that works will remain in the District and be available for display. And, under the agreements negotiated with the Attorney General, no works will leave the District without the Attorney General's concurrence, or a further order of this court.

- The Board's proposal assures the continued use of the Corcoran building as both college and gallery. It specifically contemplates that works intrinsically identified with the Corcoran will be displayed there, and specifically contemplates that major contemporary works will be displayed, continuing the Corcoran's tradition of showcasing the best of contemporary works. Movants instead seek a parochial and cramped focus on local artists, rather than the best of contemporary works. Mr. Corcoran's legacy was a national, indeed international collection. The works were displayed in the District, but did not have a requirement to originate here.
- The Board's proposal assures that the Corcoran building will be renovated, overcoming years of deferred maintenance. The Movants argue instead for continued deferral in the fond hope that some future and unspecified arrangement will occur.

Movants do not in fact represent the current staff or students. The relief they seek will only harm those interests. The Court should deny the Motion to Intervene, and promptly approve the requested cy prè.

Respectfully submitted,

Dated: July 14, 2014

By: /s/ Charles A. Patrizia

Charles A. Patrizia  
Paul Hastings LLP  
875 15th Street, N.W.  
Washington, DC 20005  
(202) 551-1700

*Counsel for Petitioners*

/s/ David S. Julyan

David S. Julyan  
Julyan & Julyan  
1100 G Street, NW, Suite 655  
Washington, DC 20005  
(202) 367-0800

## **CERTIFICATE OF SERVICE**

I hereby certify that on this 14th day of July, 2014, a copy of Petitioner's Memorandum of Points and Authorities in Opposition to Motion to Intervene was sent via the Court's electronic filing system to:

Bennett Rushkoff  
Chief, Public Advocacy Section  
D.C. Office of the Attorney General  
441 4th St., NW, Suite 600 South  
Washington, DC 20001  
Bennett.Rushkoff@dc.gov  
(202) 727-5173

Andrew S. Tulumello  
Gibson, Dunn & Crutcher, LLP  
1050 Connecticut Ave., NW  
Washington, DC 20036  
atulumello@gibsondunn.com  
(202) 955-8500

/s/Charles A. Patrizia  
Charles A. Patrizia

LEGAL\_US\_E # 110941039.12



## **EXHIBITS**

**Jayne McLellan**

## Deed of Gift

Please complete this deed of gift and return it to  
the Registrar, The Corcoran Gallery of Art,  
500 Seventeenth Street, NW, Washington, D.C. 20006.  
Upon acceptance of your gift by the Corcoran Gallery of  
Art, a copy certifying that fact will be returned to you.

I (We), Jayne McEllan, hereby irrevocably and unconditionally give, transfer, and  
assign to the Corcoran Gallery of Art by way of gift all right, title and interest in, to and associated with  
the objects described below (the "works"), I (we) warrant and represent that I (we) own the works, that to  
the best of my (our) knowledge I (we) have good and complete right, title and interest to give the works,  
that the Works are free and clear of all liens, encumbrances and restrictions and that since 1940 the Works  
have not been imported or exported into or from any country contrary to its laws.

Artist

E. Brady Robinson

Description of Gift

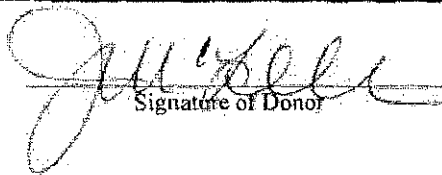
*Man, Shoes, Highway in Q. Roo, 2007*

Medium

Inkjet print

I (We) wish that the gift be identified to the public and in the permanent records of the  
Corcoran Gallery of Art as:

Gift of from the collection of Jayne McEllan

  
Signature of Donor

8/24/10  
Date

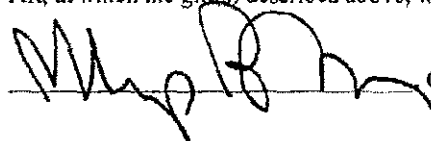
Signature of Donor

Date

3107 18th St NW WDC 20010  
Address

202-607-3804  
Telephone Number

I certify that a deed of gift and the subject thereof were physically present in the Corcoran Gallery  
of Art on 10/12/2010 at the meeting of the Board of Trustees of the Corcoran Gallery of  
Art, at which the gift(s) described above, was accepted.



Chief Curator and Head of Research

**Carolyn Campbell**

# CORCORAN

GALLERY OF ART

Date 11/8/82

Received from Carolyn Campbell

3931 W Street, N.W. Washington, D.C. 20007

Via hand

the objects described below, offered to the Gallery as a gift

subject to the conditions printed on the back of this receipt.

Receipt No. \_\_\_\_\_

By \_\_\_\_\_

Rebecca Tiger  
Rebecca Tiger Assistant Registrar

Registrar

number	description of objects	condition	valuation
	Two drawings by William Vaughn Cash No date, no titles given		
	1. Beach scene. In lower right corner: "Calita" (?), "Aug. 2 '36" 11½ x 14½"	Edges soiled, numerous rubs and soiled areas on surface	\$50.00
	2. Scene of city square. In lower right corner: "July 24" 14½ x 11½"	Edges soiled; UL and LR corners bent	\$50.00

### CONDITIONS REGARDING LOANS

1. Any object lent to the Corcoran Gallery may be returned to the lender upon reasonable notice being given by him, or his duly authorized agent or legal representative. Upon return of the loan the lender will sign a receipt.
2. The Gallery reserves the right to photograph for its own use objects lent. Permission to copy or photograph for other purposes is granted only after consent has been obtained from the owner.
3. The Gallery will exercise the same precautions in respect to loans that it does for the safekeeping of its own property.
4. All loans are insured by The Gallery.

### CONDITIONS REGARDING GIFTS

1. The Gallery will consider the objects listed in this receipt as an unrestricted gift, offered without limiting conditions for the purposes of The Gallery unless the proffer already submitted in writing has definitely stated otherwise.

**Linda Simmons**

ROBERT HILTON SIMMONS, SR.

3142 NORTH QUINCY STREET

BELLEVUE FOREST

ARLINGTON, VIRGINIA 22207

(703) 254-3125

December 30, 1997

Dr. Jack Cowart, Deputy Director/Chief Curator  
The Corcoran Gallery of Art  
500 Seventeenth Street, NW  
Washington, DC 20006

Dear Jack,

I would like to make an unrestricted gift of the following work of art to the Corcoran Gallery of Art for the collection:

*Tree* [Curtain design for Rio Rita]  
by Charles Burchfield  
Watercolor on Bainbridge artist's paper board  
10 3/16 x 12 3/16 inches (25.9 x 31 cm)

I feel this work will be a small but delightful addition to the collection of works of art on paper by American artists at the Corcoran.

Sincerely,



Robert Hilton Simmons





THE CORCORAN  
Office of the Director & Chief Curator

January 14, 1998

Mr. Robert H. Simmons  
3142 N. Quincy Street,  
Arlington, Virginia 20006

Dear Robert,

I am pleased to inform you that the Acquisitions and Loans Committee of the Museum Board of Overseers of the Corcoran Gallery of Art met December 31, 1997 and accepted your generous offer to make an unrestricted gift of:

Tree [Curtain design for Rio Rita]  
by Charles Burchfield  
watercolor on Bainbridge artist's paper board  
10 3/16 x 12 3/16 inches (25.9 x 31 cm)

We are pleased to receive this watercolor and feel that it will be a fascinating addition to the collection. There is only one other work by Burchfield, a watercolor, in the collection. It will be interesting to learn the purpose of this watercolor and try to determine the intended use of the design identified in the inscriptions on the verso.

You will need to select a credit line for labels and publications for this watercolor. I suggest the following or a variation to it: "Gift of Robert Hilton Simmons, Sr.". Please let me know your preference so it can be recorded in our records.

Thank you for the continuation of your many years of friendship and support of the Corcoran.

Sincerely,

WR

Mrs. Linda C. Simmons 3142 N. Quincy Street Arlington, Va. 22207

Dec. 20, 1993

Dear Jack -

Here is the David Smith drawing. If it is acceptable to the Concoran for the permanent collection I would like to make an unrestricted gift of it. It was purchased by Robert from his friend Robert Schoelkopf; now deceased. I received it as a valentine gift in 1976 and have enjoyed it very much since then.

Sincerely,

Linda C. Simmons -

Mrs. Linda C. Simmons 86 Davis Road Falmouth, Mass. 02540

ROBERT HILTON SIMMONS  
3142 NORTH QUINCY STREET  
ARLINGTON, VIRGINIA 22207

December 6, 1989

Dr. Franklin Kelly  
Curator of Collections  
Corcoran Gallery of Art  
Washington, D.C.

Dear Dr. Kelly:

On August 8, 1989, I purchased at auction on Cape Cod the watercolor on paper, "Greenwood Lake, New York End," signed and dated, "Geo. C. Bell, 1883," 17½ x 35½ inches. Estimate was \$2000 to \$3000; I got it for \$1300 plus 10% premium and Mass. tax.

According to custom it has been offered to the Corcoran Gallery at first refusal at my cost, since Mrs. Simmons is on staff, and upon examining it you have approved the purchase. I am happy that you think it worthy of the collection.

Rather than sell it to the Corcoran, however, I would be happy to donate it this year as an unrestricted gift to the Corcoran Gallery of Art. With this letter I do offer said gift for the consideration of the acquisitions committee at the next meeting.

I continue to do research on the piece and the artist and found out a few days ago that Bell did work in the region, perhaps lived there, and that other paintings by him are in collections around Greenwood Lake area. All this and further information I shall be happy to pass on to you.

Sincerely,



Robert H. Simmons

THE CORCORAN GALLERY

SEVENTEENTH STREET & NEW YORK AVENUE, N.W.  
WASHINGTON, D.C. 20005-5007  
(202) 638-3411

December 11, 1989

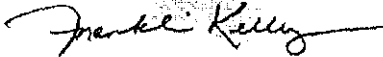
Robert H. Simmons  
3142 North Quincy Street  
Arlington, Virginia 22207

Dear Mr. Simmons:

Thank you very much for your letter of December 6th offering the Corcoran George Bell's Greenwood Lake as an unrestricted gift. I will be delighted to recommend this gift to the Museum Committee of our Board of Trustees at its next meeting on December 13th, and I am certain they will happily accept. It is a very fine watercolor, and you are most generous to offer it to us.

With thanks and best wishes,

Sincerely,



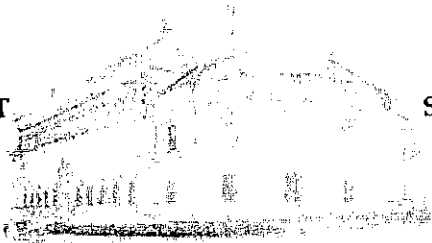
Franklin Kelly  
Curator of Collections

FK:mbk

✓ cc: Cindy Rom

MUSEUM OF ART

SCHOOL OF ART



LINDA CROCKER SIMMONS 3142 N. QUINCY ST. ARLINGTON, VIRGINIA 22207

December 22, 2003

Dr. Eric Denker  
Curator of Prints and Drawings  
The Corcoran Gallery of Art  
500 17<sup>th</sup> Street, NW  
Washington, D.C. 20006

Dear Dr. Denker,

I wish to offer the prints itemized in the attached list as my unrestricted gift to the Corcoran Gallery of Art to become part of the art collection and to be used for the educational and museum purposes of the Gallery. I inherited each of these prints from my late husband, Robert Hilton Simmons, Sr. who died in 1998. I feel certain he would be pleased to know they are to be at the Corcoran.

I would like the gift or credit line for these pieces to read: "Gift of Linda Crocker Simmons in memory of Robert Hilton Simmons, Sr."

Sincerely,

*Linda C. Simmons*

LINDA CROCKER SIMMONS 86 DAVIS RD FALMOUTH, MASSACHUSETTS 02540



MUSEUM OF ART • COLLEGE OF ART

## Deed of Gift

I Linda Simmons, hereby give to the Museum Board of Overseers of the Corcoran Gallery of Art absolute and unconditional ownership of the following, including all copyright, trademark and related interests which I(we) have:

Artist

Title of Work

Medium

SEE ATTACHED LIST

We wish that the gift be identified to the public and in the permanent records of the Corcoran Gallery of Art as:

See attached \_\_\_\_\_

I affirm that I own the objects and that, to the best of my knowledge, I have good and complete right, title and interests to give (including copyright, trademark and related interests) and that the objects of this gift is free and clear of all encumbrances and restrictions and since 1940 has not been imported or exported into or from any country contrary to its laws.

Linda C. Simmons

Signature of Donor

12-23-2003

Date

\_\_\_\_\_  
Signature of Donor

\_\_\_\_\_  
Date

Linda Crocker Simmons  
3142 N. Quincy Street  
Arlington, VA 22207  
202-534-7848

**Delivery:** Works of art offered to the Corcoran Gallery of Art should be physically present in the Corcoran for consideration by the Museum Board of Overseers at one of its regularly scheduled meetings. Please write or call the Office of the Registrar, Corcoran Gallery of Art, 500 17th Street, NW, Washington, D.C. 20006-4899 (telephone: 202-639-1700), to obtain information regarding the dates of scheduled meetings and to make arrangements for transportation and insurance of your gift.

**Object History:** For many reasons, it is important that the Corcoran have as complete as possible a history of each object presented as a gift to its collection. To that end, please forward any information or documentation which you may have with respect to your acquisition of the work(s) listed above, display and restoration and all prior ownership, display and restoration of the subject of your gift.

**Valuation:** The Corcoran may accept your valuation of your gift for insurance purposes, but may not determine value for any other purposes.

I certify that a Deed of Gift and the subject thereof were physically present in the Corcoran Gallery of Art on 12/30/03 at the meeting of the Museum Board of Overseers of the Corcoran Gallery of Art, at which the gift(s) described above, was accepted.

[Signature]  
Deputy Director and Chief Curator

Prints and Drawings Acquisitions  
December 30, 2003 MBOO meeting

From: Linda Simmons  
3142 N Quincy St  
Arlington, VA 22207-4145  
(703) 524-7848

Andre Derain, French, 1880-1954  
*Paysage dans le goût Italien—Eglise dans un grand parc.*  
(Italianate Landscape—Church in a Great Park)  
c. 1913-19, etching and drypoint, signed lower right, numbered 7/50 in pencil lower left.  
117/8" x 14" plate size  
Gift of Linda Simmons  
Insurance value: \$3000

Derain was born in 1880 at Chatou, which was the center for an artists' colony on the outskirts of Paris. His father was a successful patissier (pastry chef) and a town councillor and Derain was given a middle-class education. He took his first lessons in painting in 1895 from an old friend of his father's and of Cézanne's (but who nevertheless thoroughly disliked Cézanne's work), and in 1898 he went to the Académie Carrière in Paris, where he met Matisse. In June 1900 he met Maurice de Vlaminck, and formed a close friendship with him. Derain pursued his studies, copying in the Louvre and visiting exhibitions of contemporary art. In 1901 he was impressed by the large Van Gogh retrospective at the Bernheim-Jeune Gallery, and it was here that he introduced his two friends, Vlaminck and Matisse, to one another. The following year, 1905, he met the dealer Ambroise Vollard (to whom he had been introduced by Matisse) and the dealer bought the entire contents of his studio, as well as that of Vlaminck. Derain exhibited at the Salon des Indépendants and sold four pictures, and then at the Salon d'Automne where he, Matisse, Vlaminck and others were hung together as a group, in a space which was promptly dubbed the 'Cage aux Fauves' giving birth to the name of the first twentieth century art movement. Derain spent the summer of 1906 painting at L'Estaque, where he met Picasso. Fernande Olivier, Picasso's mistress at that time, has left a vivid description of him:

Slim, elegant, with a lively colour and enamelled black hair. With an English chic, somewhat striking. Fancy waistcoats, ties in crude colours, red and green. Always a pipe in his mouth, phlegmatic, mocking, cold, an arguer.

With the outbreak of war in 1914, Derain was mobilized and remained in the army throughout the conflict, fighting on the Somme, at Verdun and in the Vosges mountains. There was little opportunity to paint, but his career did not come entirely to a halt. The dealer Paul Guillaume gave him his first one-man show in 1916, with catalogue preface written by Apollinaire; and he provided a set of illustrations, this time for André Breton's first book, *Mont de Piété*. He was forced to remain in the army until 1919, serving with the French occupation forces in

Mainz, but when he was finally released the French art world received him with enthusiasm. In 1919 he designed the ballet *La Boutique fantastique* for Diaghilev (the first of many ballet designs), which scored a major success, done in New York in 1931. Derain's art had evolved considerably since his Fauve days. First, he had passed through a period when he showed the influence of African art (of which he was a pioneer collector), and also of Picasso's Cubism. After the war, like many other artists, he felt the renewed appeal of Classicism. He went to Italy in 1921, for the Raphael centenary celebrations held that year, and was deeply impressed by High Renaissance painting. He also drew on more directly 'classical' sources, such as Fayum portraits and Roman mosaics. The increasing conservatism of his work was not challenged until 1931, when a book called *Pour et Contre Derain* (For and Against Derain), containing essays by various hands, was published. A particularly damaging verdict came from the veteran painter and critic Jacques-Emile Blanche, who wrote: 'Youth has departed; what remains is a highly cerebral and rather mechanical art.'

He was given a retrospective at the Kunsthalle in Bern in 1935, and was included in the important 'Exposition des Artistes Indépendants' held at the Petit Palais in connection with the Paris Exposition Universelle in 1937. At his death in 1954 he was recognized as one of the major avant-garde artists of the Fauve and Cubist circles, and one of the most important of the European modernists.

Derain produced prints throughout his long career, his graphic style paralleling the developments within his painted oeuvre. *Paysage dans le goût Italien—Eglise dans un grand parc*, was executed as he was emerging from the cubist phase of his career during the time of World War I. This impressive landscape is the first large intaglio work by Derain to enter the Corcoran's collection, joining a set of late color lithographs by the artist. Along with the two other gifts of Linda Simmons, the former curator of prints and drawings, these works will help fill a serious gap in our European print collection of the early twentieth century.

Biographical text adopted from Edward Lucie-Smith, "Lives of the Great 20th-Century Artists"

Georges Rouault, French, 1871-1958

"Plus le coeur est noble, moins le col est roide."

("The Nobler the Heart, the less Stiff the Collar.")

From the portfolio *Miserere*, plate 49

1916-1928, published 1948, etching and aquatint.



23" x 16 5/8" plate size  
Gift of Linda Simmons  
Insurance value: \$1500

Georges Rouault : The Miserere Series

Georges Rouault (1871-1958) was born in a working-class suburb of Paris. Encouraged by his grandfather, he began drawing as a child and was apprenticed to a stained-glass maker at the age of fourteen. In his spare time, he practiced his technique at the École Nationale des Arts Décoratifs, and frequented the Louvre. At age twenty, Rouault began studying at the École des Beaux-Arts under Gustave Moreau (1826-98) who also taught Henri Matisse and Albert Marquet. Shortly after Moreau died and bequeathed his estate to the City of Paris, Rouault was made the curator of the new Musée Gustave Moreau. In 1902 Rouault helped to found the Salon d'Automne where he exhibited his work along with the Fauves and Indépendants, two groups of artists not included in the official Salon of the French Royal Academy. Rouault was thirty-eight when he had his first solo exhibition in Paris. Rouault received major recognition for his work in 1937, when his paintings were displayed in conjunction with the Paris World's Fair.

Rouault, a devout Catholic, painted images of Christ, along with prostitutes, lawyers, judges and clowns as part of a commentary on the corruption of society. He believed in the teaching of the Gospel and stated that his "only ambition is to be able to paint a Christ so moving that those who see Him will be converted."

The art dealer Ambroise Vollard (1865-1939) commissioned Rouault to produce prints for a two volume edition. For this project, entitled *Miserere et Guerre*, Rouault was to create a hundred images which would appear with text by the poet André Suarès. Rouault started the series in 1914 and continued working on it through World War I and again from 1922 until 1927. Vollard became Rouault's sole agent and employer after 1916. Vollard and his family retained control of the images until 1948, at which time Rouault prevailed in court and then published his collection of prints as a single volume entitled *Miserere*.

To create this series, the artist had his preliminary drawings photographically transferred onto copper plates using a process known as heliogravure. Rouault then reworked each plate using a variety of intaglio printmaking techniques. The term intaglio means "to cut in" and refers to aquatint, drypoint, and etching processes. Each of these techniques used by Rouault involves incising or engraving a metal plate either chemically or with a drypoint instrument such as an etching needle or burr. Both aquatinting and etching require use of an acid-resistant material called a ground and an acid bath which pits the surface. In some instances Rouault made as many as fifteen successive impressions or states of a specific image before being satisfied.

Many of the themes found in Rouault's paintings are repeated in the *Miserere* series. In the first part of the series, the sufferings of Christ are interwoven with those of Man. By contrast, the second part of the series entitled *Guerre* includes more images of death, but ends with the idea of resurrection and Man's salvation through

the sacrifice of Christ. Rouault revealed for many the relevance of Christianity during what has been called the "post-Christian" era.

Adopted from

Annemarie Sawkins, Associate Curator, Haggerty Museum of Art  
Marquette University

This large intaglio print is the first work by Rouault to enter the Corcoran's print and drawing collection. Along with the two other current gifts of Linda Simmons, the former curator of prints and drawings, these works will help fill a serious gap in our European print collection of the early twentieth century.

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Jacques Villon (Gaston Duchamp), French, 1875-1963

Untitled, c. 1921, etching

5" x 3 1/2" plate size

Gift of Linda Simmons

Insurance value: \$1500

Jacques Villon, whose birth name was Gaston Duchamp, was the oldest brother of the artists Marcel Duchamp, Suzanne Duchamp-Crotti and the sculptor Raymond Duchamp-Villon. Villon began studying as a law student but in 1894 went to Paris to study art. He

changed his name to Villon (after the poet). He met Toulouse-Lautrec and many other influential artists working in Paris at the time. He exhibited at the Salon d'Automne in 1904 and painted and made some of the finest belle-époque portraits and genre scenes of the early 20th century. Around 1911 he came under the influence of Picasso and other cubists and became a leading exponent of the style, exhibiting in the New York Armory Show in 1913. In 1922, in straightened circumstances, he was commissioned by the Galerie Bernheim-Jeune to produce a series of color aquatints after 38 major 19th and 20th century paintings by artists including the Douanier Rousseau, Renoir, Matisse, Picasso, Cézanne, Braque, Dufy, Modigliani, Manet, Bonnard and many others, and those artists who were still alive collaborated and signed the prints which were meant to provide the public with access to these works. The project took 10 years. Many of these prints are highly prized today and some went on to be widely reproduced by the Louvre Museum as photo-etchings. His 'cubist' style etchings, with their characteristic cross-hatching (later to be emulated by David Hockney and others) are among the most important prints of the 20th century. He was made a Grand Officier de la Légion d'Honneur, France's highest honor and when he died at the age of 88 he was given a state funeral.

Villon began making prints in 1891, executing his final print in 1960. His long career produced a number of diverse styles in both painting and printmaking, from fin-de-siècle portraits to cubist and abstract styles to his later graphic work. This diminutive etching appears to have been done around 1921, at a time when Villon was experimenting with his most cubist abstractions. It is the first work by Villon to enter the Corcoran's print and drawing collection. Along with the two other current gifts of Linda Simmons, the former curator of prints and drawings, these works will help fill a serious gap in our European print collection of the early twentieth century.

3142 North Quincy Street  
Arlington, Virginia 22207  
December 3, 1978

Mr. Edward Kyren  
Director of Collections  
Corcoran Gallery of Art  
Washington, D.C.

Dear Mr. Kyren:

We wish to donate to the Corcoran Gallery of Art the following work:

A Merry Christmas and a Happy New Year, 1859

By Winslow Homer (1836-1910)

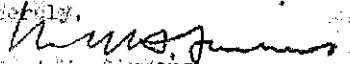
Wood engraving, 13 3/4 inches x 20 1/8 inches (plate ),  
16 inches inches x 22 inches (sheet)

From Harper's Weekly, December 24, 1859

This may be considered an unrestricted gift.

With Season's Greetings;

Sincerely,

  
Robert H. Simmons

3142 North Quincy Street  
Arlington, Virginia 22207  
December 7, 1978

Dr. Edward Nygren  
Curator of Collections  
Corcoran Gallery of Art  
Washington, D.C.

Dear Dr. Nygren:

We wish to donate to the Corcoran Gallery of Art the following work:

Portrait of a Man (member of Aulick-Gibbons family of Winchester, Virginia, 1801

By Jacob Frymire (1765/74-1822)

Oil on linen, 29<sup>1/2</sup> inches x 24 inches<sup>6</sup>


Signed on reverse: "Painted by J. Frymire  
"June 2d, 1801"

(Gift of Mr. & Mrs. Robert Hilton Simmons in Memory of  
Dorothy W. Phillips)

This may be considered an unrestricted gift. If sold, however,  
the proceeds should, if possible, be used to purchase another  
painting by Frymire.

With best wishes of the season,

Sincerely,

  
Robert H. Simmons

Simmons  
3142 N. Quincy Street,  
Arlington, Virginia  
22207  
703-524-3195

November 30, 1987

Dr. Edward J. Nygren, Acting Director  
Corcoran Gallery of Art  
17th Street and New York Avenue, N. W.,  
Washington, D. C. 20006

Dear Dr. Nygren,

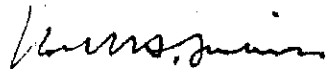
We would like to offer the following works of art on paper as unrestricted gifts to the Corcoran Gallery of Art:

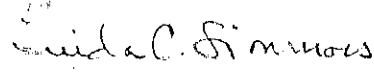
Untitled by Bertha Lum  
woodcut, 1907

The Artist in the Country after Winslow Homer \$100  
wood engraving published in Appleton's

Emily by Franklin White \$500  
silkscreen, 1973

Sincerely,

  
Robert Hilton Simmons

  
Linda Crocker Simmons

## THE CORCORAN GALLERY

December 2, 1987

Mr. and Mrs. Robert Simmons  
3142 N. Quincy Street  
Arlington, Virginia 22207

Dear Linda and Robert:

On behalf of the Board of Trustees of the Corcoran Gallery of Art, I am delighted to confirm that at its meeting on December 2, 1987, the Committee on Works of Art unanimously accepted the following works which you offered as unrestricted gifts:

Bertha Lum	<u>Untitled</u> 1907 woodcut
after Winslow Homer	<u>The Artist in the Country</u> wood engraving published in Appleton's
Franklin White	<u>Emily</u> 1973 silkscreen

These prints are a significant addition to the Corcoran's collection of American graphics, and we thank you for your generosity and support for the Gallery.

Very truly yours,



Edward J. Nygren  
Executive Director

cc: Sally Smith  
EJN/nh

*Re: Simmons*

MUSEUM OF ART

SCHOOL OF ART